No. 73 and 74.

Off. of Williams & Wood for Appellees

Office Supreme Court U.S.
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JAMES H. MCKENNEY,
Clerk.

IN THE

SUPREME COURT

Filed Sept. 11, 1900.

OF THE

UNITED STATES

THE OREGON RAILROAD AND NAVIGATION COMPANY, *Appellant*,

v.

ROBERT BALFOUR, *et al.*, partners doing business as BALFOUR, GUTHRIE & Co., *et al.*, *Appellees*.

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THE OREGON RAILWAY AND NAVIGATION COMPANY and THE OREGON SHORT LINE & UTAH NORTHERN RAILWAY COMPANY, *Appellants*,

v.

ROBERT BALFOUR, *et al.*, partners doing business as BALFOUR, GUTHRIE & Co., *et al.*, *Appellees*.

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Motion to Dismiss Appeal and Affirm, and Brief on Same.

GEO. H. WILLIAMS and
C. E. S. WOOD,
Proctors for Balfour, Guthrie & Co.

PORTLAND, OREGON:
F. W. BALTES AND COMPANY, PRINTERS, 225 OAK STREET.
1900.

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SUPREME COURT

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Motion to Dismiss and Affirm.

Now come Robert Balfour, Stephen Williamson, Alexander Guthrie, Robert Brodie Forman, R. Bruce and Walter J. Burns, partners under the firm name of Balfour, Guthrie & Co., appellees herein, by George H. Williams and C. E. S. Wood, their proctors, and move in each of the above entitled several cases that the appeal be dismissed; and said appellees move in each of said cases that the judgment rendered in each of said cases by the United States Circuit Court of Appeals for the ninth circuit, October term, 1898, be affirmed.

GEORGE H. WILLIAMS and
C. E. S. WOOD,
Proctors for Balfour, Guthrie & Co.

Brief on Motion to Dismiss and Affirm.

The suit in which this appeal is taken was one originally brought in the district court of the United States for the district of Oregon by appellants Oregon Railway & Navigation Company and Oregon Short Line & Utah Northern Railway Company, praying for limitation of their liability for losses arising by reason of the wreck of the barge "Columbia," upon waters within the jurisdiction of said district court, and the appeal itself is taken from the decree of the United States Circuit Court of Appeals for the ninth circuit, affirming the final decree of said district court.

I.

This court has no jurisdiction to entertain the appeal.

Section 6 of the act establishing the United States Circuit Courts of Appeal provides that the decree of such court shall be final in admiralty cases.

Aztec Mining Co. v. Ripley, 151 U. S. 79.

Proceedings under the act of congress limiting the liability of shipowners are cases in admiralty.

Norwich Co. v. Wright, 13 Wall. 104, 123.

The "Benefactor," 103 U. S. 239, 246.

Providence & New York Steamship Co v. Hill Mnfg. Co., 109 U. S. 578.

Butler v. Boston Steamship Co., 130 U. S. 527.

Supreme Court Rules of Practice in Admiralty 54, 55, 56 and 57.

In Norwich v. Wright, 13 Wall. 123, 124, this court says:

"Now, no court is better adapted than a court of admiralty to administer precisely such relief. It happens every day that the proceeds of a vessel, or other fund, is

brought into that court to be distributed amongst those whom it may concern. Claimants are called in by monition to present and substantiate their respective claims; and the fund is divided and distributed according to the respective liens and rights of all the parties. Congress might have invested the circuit courts of the United States with the jurisdiction of such cases by bill in equity, but it did not. It is also evident that the state courts have not the requisite jurisdiction. Unless, therefore, the district courts themselves can administer the law, we are reduced to the dilemma of inferring that the legislature has passed a law which is incapable of execution. This is never to be done if it can be avoided. We have no doubt that the district courts, as courts of admiralty and maritime jurisdiction, have jurisdiction of the matter; and this court undoubtedly has the power to make all needful rules and regulations for facilitating the course of proceeding."

Following upon which decision, rules 53, 54, 55, 56, 57 and 58 of this court were adopted as rules of practice in admiralty..

And, as this court again says, in Butler v. Boston & S. S. S. Co., 130 United States, 557:

"The present case, therefore, is clearly within the admiralty and maritime jurisdiction. . . . It is unnecessary to consider the force and effect of the statute of Massachusetts over the place in question. Whatever force it may have in creating liabilities for acts done there, it cannot neutralize or affect the admiralty or maritime jurisdiction or the operation of the maritime law in maritime cases."

And in Providence & N. Y. Steamship Co. v. Hill Manuf'g Co., 109 United States, 593:

"The subject is one pre-eminently of admiralty jurisdiction. The rule of limited liability prescribed by the

act of 1851 is nothing more than the old maritime rule administered in courts of admiralty in all countries except England from time immemorial; and, if this were not so, the subject-matter itself is one that belongs to the department of maritime law. The adoption of forms and modes of proceeding requisite and proper for giving due effect to the maritime rule thus adopted by congress, and for securing to shipowners its benefits, was therefore strictly within the powers conferred upon this court; and where the general regulations adopted by this court do not cover the entire ground, it is undoubtedly within the power of the district and circuit courts, as courts of admiralty, to supplement them by additional rules of their own."

And again, in the same case, page 594:

"In promulgating the rules referred to, this court expressed its deliberate judgment as to the proper mode of proceeding on the part of shipowners for the purpose of having their rights under the act declared and settled by the definitive decree of a competent court, which should be binding on all parties interested, and protect the shipowners from being harassed by litigation in other tribunals."

And again, in the same case, page 599:

"We see no reason to modify these views (Norwich Transp. Co. v. Wright, supra), and, in our judgment, the proper district court, designated by the rules or otherwise indicated by circumstances, has full jurisdiction and plenary power, as a court of admiralty, to entertain and carry on all proper proceedings for the due execution of the law, in all its parts."

Respectfully submitted.

GEORGE H. WILLIAMS,

C. E. S. WOOD,

Proctors for Appellees.